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Attorneys Specially Appearing for Defendants
BAC HOME LOANS SERVICING, LP f/k/a
COUNTRYWIDE HOME LOANS
SERVICING, LP (erroneously sued and served
as BANK OF AMERICA and COUNTRYWIDE
HOMES LOANS, INC.), RECONTRUST
COMPANY, N.A., and MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PEOPLE OF CALIFORNIA; MI J YUN,
DEVON WOOD; AND JEAN KEATING
AS EX RELATORS, ET AL,

Plaintiffs,

v.

BANK OF AMERICA;
COUNTRYWIDE HOME LOANS INC.;
RECONTRUST COMPANY, N.A. as
alleged;
TRUSTEE; MERS; and DOES 1-1000

Defendants.

Case No.: EDCV 09-02195 AG(MANx)

Honorable Andrew J. Guilford

[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS FIRST AMENDED
COMPLAINT

[Filed concurrently with Notice of
Motion and Motion to Dismiss First
Amended Complaint; and Request for
Judicial Notice.]

Date: April 12, 2010

Time: 10:00 a.m.

Courtroom: 10D

Complaint Filed: November 3, 2009
First Amended

Complaint: February 16, 2010

Removal Filed: November 30, 2009

Trial Date: Not Assigned

Defendants BAC Home Loans Servicing, LP f/k/a Countrywide Home Loans
Servicing, LP (erroneously sued and served herein as Bank of America and

1 Countrywide Home Loans, Inc.), Recontrust Company, N.A., and Mortgage
2 Electronic Registration Systems, Inc.'s Motion to Dismiss Plaintiffs' First Amended
3 Complaint (the "Motion"), came on regularly for hearing on April 12, 2010 at 10:00
4 a.m., the Honorable Andrew J. Guilford presiding.

5 After considering the papers submitted by the parties, the evidence contained
6 therein, having heard the argument of counsel thereon, and for good cause shown
7 therefor, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

8 The First Amended Complaint of Plaintiffs Mi J. Yun, Devon Wood and Jean
9 Keating ("Plaintiffs") fails to state a claim upon which relief may be granted, and shall
10 be dismissed with prejudice as follows:

11 1. Plaintiffs' Wood and Keating's First Claim for Relief; Second Claim for
12 Relief; First Cause of Action [sic; paragraphs 120-125 are erroneously labeled "First
13 Cause of Action"]; Second Cause of Action [sic; paragraphs 126-150 are erroneously
14 labeled "Second Cause of Action"]; Third Cause of Action; Fourth Cause of Action;
15 Fifth Cause of Action; Sixth Cause of Action; Seventh Cause of Action; Eighth Cause
16 of Action; Ninth Cause of Action; and Tenth Cause of Action fail to state a claim
17 upon which relief may be granted because Wood and Keating lack standing to pursue
18 each and every Claim for Relief. This is an incurable deficiency in the First Amended
19 Complaint.

20 2. Plaintiff Mi J. Yun's First Claim for Relief; Second Claim for Relief;
21 First Cause of Action [sic; paragraphs 120-125 are erroneously labeled "First Cause of
22 Action"]; Second Cause of Action [sic; paragraphs 126-150 are erroneously labeled
23 "Second Cause of Action"]; Third Cause of Action; Fourth Cause of Action; Fifth
24 Cause of Action; Sixth Cause of Action; Seventh Cause of Action; Eighth Cause of
25 Action; Ninth Cause of Action; and Tenth Cause of Action fail to state a claim upon
26 which relief may be granted because Mi J. Yun is not an actual participant in this
27 matter, but rather was added in name only by Plaintiffs Wood and Keating in an
28 attempt to cure their fatally deficient lack of standing, without authority or permission,

1 and by apparently forging her signature on the First Amended Complaint and attached
2 Verification.

3 3. Plaintiffs' First Claim for Relief; Second Claim for Relief; First Cause of
4 Action [sic; paragraphs 120-125 are erroneously labeled "First Cause of Action"];
5 Second Cause of Action [sic; paragraphs 126-150 are erroneously labeled "Second
6 Cause of Action"]; Third Cause of Action; Fourth Cause of Action; Fifth Cause of
7 Action; Sixth Cause of Action; Seventh Cause of Action; Eighth Cause of Action;
8 Ninth Cause of Action; and Tenth Cause of Action fail to state a claim upon which
9 relief may be granted because Plaintiffs have failed to make a proper tender of actual
10 value in payment of the amounts owed under the alleged loan, therefore they lack
11 standing to pursue any claim for relief attempting to invalidate or enjoin any proposed
12 foreclosure of the Deed of Trust.

13 4. Plaintiffs' First Cause of Action fails to state a claim upon which relief
14 may be granted because the allegation that MERS lacks capacity to foreclose fails as a
15 matter of law.

16 5. Plaintiffs' Second Claim for Relief, and the Second, Fourth, Fifth and
17 Ninth Causes of Action fail to state a claim upon which relief may be granted because
18 they are time-barred.

19 6. Plaintiffs' Third Cause of Action for "Tortuous Violation of Statute Real
20 Estate Settlement Procedures Act" fails to state a claim upon which relief may be
21 granted because it is time barred by the statue of limitations.///

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1 7. Plaintiffs' Seventh Cause of Action for "Violation of California Civil
2 Code section 2923.6 fails to state a claim upon which relief may be granted for two
3 reasons: 1) no private right of action exists for its violation; and 2) section 2923.6
4 does not require a lender to offer a loan modification nor mandate acceptance of a
5 modification suggested by borrower.

6 IT IS SO ORDERED.

7
8 DATED: _____

_____ HON. ANDREW J. GUILFORD
UNITED STATES DISTRICT JUDGE

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11 Respectfully submitted by,

12 DIANE C. STANFIELD
13 DEBORAH YOON JONES
14 ADRIENE PLESCIA LYNCH
ALSTON & BIRD LLP

15
16 /s/ Diane C. Stanfield
Diane C. Stanfield

17 Specially Appearing for Defendants
18 **BAC HOME LOANS SERVICING, LP f/k/a**
19 **COUNTRYWIDE HOME LOANS**
20 **SERVICING, LP (erroneously sued and**
21 **served as BANK OF AMERICA and**
COUNTRYWIDE HOMES LOANS, INC.),
RECONTRUST COMPANY, N.A., and
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

PROOF OF SERVICE

I, Rosa Nelly Villaneda, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On March 8, 2010, I served the document(s) described as **[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

- ☒ BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071.
- ☐ BY UPS OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by UPS with delivery fees fully provided for or delivered the envelope to a courier or driver of authorized to receive documents at Alston & Bird LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.
- ☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.
- ☐ BY E-MAIL: I submitted an electronic version of this document and exhibits, if any, via PDF to all parties at their e-mail addresses on the attached Service List.
- ☐ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- ☒ [Federal] I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 8, 2010, at Los Angeles, California.


Rosa Nelly Villaneda

Wood v. Bank of America, et al.
USDC, Central District, Eastern Division
Case No. EDCV09-02195 AG (MANx)

SERVICE LIST

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